

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

STEVEN DELAINE

PETITIONER

V.

CAUSE NO. 3:16-CV-938-CWR-FKB

L. SHULTS, *et al.*

RESPONDENTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge F. Keith Ball. Docket No. 12. After examining the record in this case, Judge Ball recommended that Petitioner Steven Delaine's 28 U.S.C. § 2241 petition for writ of habeas corpus be denied. *Id.* Delaine has objected to the Report and Recommendation. Docket No. 14.

Delaine does not object to the Magistrate Judge's finding that Delaine's reliance on *Begay v. United States*, 553 U.S. 137 (2008), and *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), fails to provide relief under the saving clause exception of 28 U.S.C. § 2255. However, Delaine argues that the Supreme Court's ruling in *Persaud v. United States*, 571 U.S. 1172 (2014), supersedes established Fifth Circuit precedent that "a claim of actual innocence of a career offender enhancement is not a claim of actual innocence of the crime of conviction and, thus, not the type of claim that warrants review under § 2241." *In re Bradford*, 660 F.3d 226, 230 (5th Cir. 2011). However, his argument is foreclosed by *Robinson v. United States*, in which the Fifth Circuit held that "*Persaud* was not a substantive decision" and accordingly did not overrule its precedent regarding the availability of § 2241 relief. 812 F.3d 476, 477 (5th Cir. 2016). Delaine's arguments are preserved for further review.

Having fully reviewed the Magistrate Judge's Report and Recommendation, the court concludes that the Report and Recommendation is well-reasoned and legally correct, and therefore

overrules Delaine's objection. The Report and Recommendation is adopted fully as this Court's own Order. Accordingly, Delaine's petition for writ of habeas corpus is dismissed. A separate Final Judgment shall issue this day.

SO ORDERED AND ADJUDGED, this the 12th day of February, 2020.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE